

PETITIONER:
SPECIAL MILITARY ESTATES OFFICER

Vs.

RESPONDENT:
MUNIVENKATARAMIAH & ANOTHER

DATE OF JUDGMENT 10/01/1990

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
RANGNATHAN, S.

CITATION:
1990 AIR 499 1990 SCR (1) 4
1990 SCC (2) 168 JT 1990 (1) 1
1990 SCALE (1)2

ACT:

Requisitioning and Acquisition of Immovable Property Act, 1952: Sections 11 and 25(1)--Award of compensation by Arbitrator under section 30--Defence of India Act 1962--Appeal--Maintainability of.

Defence of India Act 1962: Section 30--Requisitioning of land--Award of compensation by Arbitrator--Appeal against--Not maintainable in view of Section 25 Requisitioning Act in respect of period prior to January 10, 1968.

HEADNOTE:

The Defence of India Act, 1962 was passed by Parliament in the wake of the Chinese aggression to ensure public safety and interest in the Defence of India and Civil Defence and other connected matters. It had been passed when the Requisitioning and Acquisition of Immovable Property Act, 1952 was already in force. Under the provisions of both these Acts, immovable property could be requisitioned. Under both Acts compensation on such requisition was determinable and payable and any person interested, being aggrieved by the amount of compensation so determined, could have an Arbitrator appointed to determine the same. The award of the Arbitrator on such determination under Section 8 was appealable under Section 11 of the Requisitioning Act before the High Court within whose jurisdiction the requisitioned property was situated. The award of the Arbitrator made under Section 30 in pursuance of the requisition made under Section 29 of the Defence Act was apparently final, though specifically not provided, since no right of appeal against the award of the Arbitrator had been conferred thereunder on any authority.

The Defence Act ceased being applicable as it perished on January 10, 1968. Simultaneously Section 25 in the Requisitioning Act was substituted.

Some lands belonging to the first respondent in either of the two appeals were requisitioned by the Union of India under Section 29 of the Defence of India Act, 1962 by issuing a notification to that effect on

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April 8, 1963 and possession was taken by the military authorities on May 28, 1963. The requisitioned property was

not released before January 10, 1968 in terms of Section 25(1) of the Requisitioning Act.

The Deputy Commissioner, the competent authority fixed Rs.280 per acre per annum as crop compensation. Respondent No. 1 not being satisfied sought a reference from the competent authority to an arbitrator. The arbitrator went into the matter and made an award on June 30, 1971.

The Special Military Estates Officer being aggrieved with the award filed two appeals against the orders of the Arbitrator in the High Court, taking shelter under Section 11 of the Requisitioning and Acquisition of Immovable Property Act, 1952.

Since the properties that had been requisitioned had not been released before January 10, 1968, it had to be treated seemingly to have been requisitioned by the competent authority under the provisions of the Requisitioning Act for the purpose for which such property was held immediately before the said date and all the provisions of the said Act were to apply.

Objections to the maintainability of the appeals were taken relying on proviso (a) to Section 25(1) on the ground, that the word 'determination' in the context meant determination only by the competent authority under the Defence Act and since such determination held the field and was in force immediately before January 10, 1968, no challenge thereto could be made by appealing against the same, on the premises that a provision amongst all the provisions of the Requisitioning Act provided an appellate forum challenging the same.

The High Court upheld the objection and dismissed the appeals.

The Special Military Estates Officer appealed to this Court by special leave.

Partially allowing the appeals, the Court,

HELD: 1. The right of appeal is a substantive right conferred on a party by the statute. The conferring of such right is not circumscribed by the right being available at the time of the institution of the cause in the court of the first instance. In a given situation it may already be available at the institution of the cause in the court of first instance or

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may even be subsequently conferred. In either situation, without any distinction, such right is conferred by statute.-[10E-F]

2. The Legislature by enacting Section 25 of the Requisitioning Act and on the perishing of the Defence Act has more than impliedly made available a right of appeal regarding the rate of compensation for a property remaining under requisition for the post 10th January, 1968 period, recurring as the rate of compensation would be. [11G-H]

3. From the scheme of things and from the reading of Section 25 of the Requisitioning Act as a whole, it is discernible that for the period of requisition before January 10, 1968, the determination for payment of compensation under the Defence Act would remain untouched and unaltered for appeal had never been provided under the Act. The reason is not far to seek because the order of the competent authority under the Defence Act was for the purpose of Defence of India Act. That purpose having gone with effect from January 10, 1968, the same determination for payment of compensation being applicable to the cost-date period was seemingly a requisition by the competent authority under the Requisitioning Act and since all the provisions of the said Act applied to such a requisition, the payment of compensa-

tion as from January 10, 1968, became appealable as an appeal is provided under this Act. [10H; 11A-B]

4. The word 'determination' so far as it related to the period of requisition prior to January 10, 1968, was a determination, final in character whether it was right or wrong as having been made under the Defence Act. But for the period thereafter, the word 'determination' in the context would mean 'final determination' i.e. the determination of the competent authority if unchallenged and becoming final, and if appealed against, final determination by the appellate forum. [11C-D]

5. A harmonious construction of the proviso to Section 25(1) with the whole of parent section indicates that the rate of compensation as determined by the competent authority under the Defence Act was valid upto the period January 10, 1968, but from that day onward the same rate of compensation per annum would keep applying till upset or altered in appeal, because deeming from that date it is a requisition under the other Act and of a different worth and correctable in appeal. [11D-E]

6. The latter portion of proviso (a) cannot therefore be allowed to eat away the applicability of all the provisions of the Requisition Act,

7 inclusive that of appeal under Section 11 of the Act. [11 D]

7. In the instant case, the arbitrator passed both the awards on June 30, 1971, pertaining to the period commencing from May 28, 1963, the date on which the possession of the land requisitioned was taken. Plainly the award was made covering a period not any prior to January 10, 1968 but to a period thereafter. Having regard to section 25 the objection as raised before the High Court was valid for the period before January 10, 1968, but not beyond the period commencing thereafter. The case has therefore to be remitted back to the High Court for disposal on merits. [11F, 12A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 204205 of 1975.

From the Judgment and Decree dated 9.8. 1974 of the Karnataka High Court in M.F. Appeal Nos. 582 and 584 of 1971.

V.C. Mahajan (N.P.), Tarachand Sharma and C.V. Subba Rao for the Appellant.

K.R. Chaudhary (N.P.) for the Respondents.

The Judgment of the Court was delivered by

M.M. PUNCHHI, J. It is to establish a right of appeal in the appellate forum of the High Court that the Special Military Estates Officer, Bangalore, the common appellant in these two Civil Appeals by Special Leave, is here in this Court, challenging the common judgment and order of the High Court of Karnataka.

The facts leading to the present appeal are these. Some lands, the extent and description of which is not material here, belonging to the first respondent in either of these two appeals, were requisitioned by the Union of India under Section 29 of the Defence of India Act, 1962 (hereafter referred to as the Defence Act) by issuing a notification to that effect on April 8, 1963. The possession of such lands was taken by the military authorities on May 28, 1963. The competent authority, being the Deputy Commissioner of the district, fixed Rs.280 per acre per annum as crop compensation. Respondent No. 1 was not satisfied with the measure of

compensation. He sought a reference from the competent authority to an arbitrator. The Arbitrator so appointed went into the matter and finally made an award on June 30,

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1971, whereby he worked out rental compensation at the rate of Rs.6969.60 per acre per annum on the premises that the value of the land worked out to be Rs.1,16,160 per acre and if 6 per cent interest were to be awarded thereon the figure arrived at would be Rs.6969.60 per acre, which could well be the rental income per annum. Obviously, the increase was sharply contrasted being Rs.280 per acre per annum as awarded by the competent authority and almost Rs.7,000 per acre per annum as awarded by the Arbitrator. The aggrieved Special Military Estates Officer filed two appeals against the orders of the Arbitrator in the High Court of Karnataka at Bangalore, taking shelter under Section 11 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (hereafter referred to as the Requisitioning Act). At the time of their final disposal, a preliminary objection was raised on behalf of the respondents that the appeals were not maintainable, which found favour with the High Court. The appeals were consequently held not maintainable and accordingly dismissed. This has led the appellant--Special Military Estates Officer, to this Court.

It is not far history that the Defence Act was passed by the Parliament in the wake of the Chinese aggression, in order to provide, inter alia, special measures to ensure public safety and interest in the Defence of India and Civil Defence and other connected matters. It had been passed when the Requisitioning Act was already in force. Under the provisions of both the Acts, immovable property could be requisitioned. Reference for the purpose may be had to section 3 of the Requisitioning Act and Section 29 of the Defence Act. Under both Acts compensation on such requisition is determinable and payable and any person interested, being aggrieved by the amount of compensation so determined, can have an Arbitrator appointed to determine compensation. The award of the Arbitrator on such determination under Section 8 is appealable under Section 11 of the Requisitioning Act before the High Court within whose jurisdiction the requisitioned property is situate. The award of the Arbitrator made under Section 30 in pursuance of the requisition made under Section 29 of the Defence Act is apparently final, though specifically not provided so, since no right of appeal against the award of the Arbitrator has been conferred thereunder on any authority. The Defence Act ceased being applicable as it perished on January 10, 1968. Simultaneously Section 25 in the Requisitioning Act was substituted. The substituted Section 25 reads as follows:

"25(1) Notwithstanding anything contained in this Act, any immovable property requisitioned by the Central

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Government or by any officer or authority to whom powers in this behalf have been delegated by that Government, under the Defence of India Act, 1962, and the rules made thereunder (including any immovable property deemed to have been requisitioned under the said Act) which has not been released from such requisition before the 10th January, 1968, shall, as from that date, be deemed to have been requisitioned by the competent authority under the provisions of this Act for the purpose for which such property was held immediately before the said date and all the provisions of this Act shall apply accordingly.

Provided that:

(a) all determinations, agreements and awards for the pay-

ment of compensation in respect of any such property for any period of requisition before the said date and in force immediately before the said date, shall continue to be in force and shall apply to the payment of compensation in respect of that property for any period of requisition as from the said date;

(b) anything done or any action taken (including any orders, notifications or rules made or issued) by the Central

Government or by any officer or authority to whom powers in this behalf have been delegated by that Government, in exercise of the powers conferred by or under Chapter VI of the Defence of India Act, 1962, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this section was in force on the date on which such thing was done or action was taken.

(2) Save as otherwise provided in sub-section (1), the provisions of the Defence of India Act, 1962, and the rules made thereunder, in so far as those provisions relate to the requisitioning of any such immovable property as is referred to in sub-Section (1), shall as from the 1st January, 1968, cease to operate except as respect things done or omitted to be done before such cesser and Section 6 of the General Clauses Act, 1897, shall apply upon such cesser of operation as if such cesser were, a repeal of an enactment by a Central Act.

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The requisitioned property admittedly was not released before January 10, 1968, in terms of Section 25(1) of the Requisitioning Act, afore quoted, Since the requisition had not been released before January 10, 1968, from that day onwards it had to be treated deeming to have been requisitioned by the competent authority under the provisions of the Requisitioning Act for the purpose for which such property was held immediately before the said date and all the provisions of the said Act were to apply accordingly. The objection to the maintainability of the appeals rested on proviso (a), afore-quoted, on the ground that the word 'determination' in the context meant determination only by the competent authority under the Defence Act and since such determination held the field and was in force immediately before January 10, 1968, no challenge thereto could be made by appealing against the same, on the premises that a provision amongst all the provisions of the Requisitioning Act provided an appellate forum challenging the same. The objection was met on the argument that the word 'determination' when considered in the context of the proviso, meant 'final determination' and not merely determination of compensation at the level of the competent authority. The High Court, as said before, upheld the objection, dismissing the appeals.

It is settled law that the right of appeal is a substantive right conferred on a party by the statute. The conferring of right of appeal is not circumscribed by the right being available at the time of the institution of the cause in the court of the first instance. The right of appeal in a given situation may already be available at the institution of the cause in the court of the first instance or may even be subsequently conferred. In either situation, without any distinction, such right is conferred by statute. Here, as would be seen, Section 25(1) substantively provides that the requisition of property under the Defence Act continuing upto January 10, 1968, is deeming to be a requisition by the competent authority under the provisions of the Requisition-

ing Act and all the provisions of the said Act shall apply thereto accordingly. Proviso (a) however, says that all determinations, agreements and awards for the payment of compensation in respect of any such property for any period of requisition before the said date and in force immediately before the said date, shall continue to be in force and shall apply to the payment of compensation in respect of that property for any period of requisition as from the said date. It is discernible from the scheme of things and from the reading of Section 25 of the Requisitioning Act as a whole that for the period of requisition before January 10, 1968, the determination for payment of compensation

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under the Defence Act would remain untouched and unaltered for appeal had never been provided under that Act. The reason is not far to seek, because the order of the competent authority under the Defence Act was for the purpose of Defence of India. That purpose having gone with effect from January 10, 1968, the same determination for payment of compensation being applicable to the post-date period was deemingly a requisition by the competent authority under the Requisitioning Act and since all the provisions of the said Act applied to such a requisition, the payment of compensation as from January 10, 1968, became appealable as an appeal is provided under this Act. In that sense, the word 'determination', so far as it related to the period of requisition prior to January 10, 1968, was a determination, final in character whether it was right or wrong as having been made under the Defence Act. But for the period thereafter, the word 'determination' in the context would mean 'final determination' i.e. the determination of the competent authority if unchallenged and becoming final, and if appealed against, final determination by the appellate forum. In this sense, the latter portion of proviso (a) cannot be allowed to eat away the applicability of all the provisions of the Requisitioning Act, inclusive that of appeal under Section 11 of the Act. Thus a harmonious construction of the said proviso with the whole of parent section persuades us to hold that the rate of compensation as determined by the competent authority under the Defence Act was valid upto the period before January 10, 1968, but from that day onward the same rate of compensation per annum would keep applying till upset or altered in appeal, because deemingly from that date it is a requisition under the other Act and of a different worth and correctable in appeal. The Arbitrator as it appears had passed both the awards on June 30, 1971, pertaining to the period commencing from May 28, 1963, (the date on which the possession of the land requisitioned was taken) and valid for the period following and ensuing. Plainly the award was made covering a period not only prior to January 10, 1968 but to a period thereafter also. As we have interpreted Section 25, the objection as raised before the High Court was valid for the period before January 10, 1968, but not beyond the period commencing thereafter. The High Court's view, in sustaining the objection for the later period as well, does not commend to us. The Legislature by enacting Section 25 of the Requisitioning Act and on the perishing of the Defence Act, has more than impliedly made available a right of appeal regarding the rate of compensation for a property remaining under requisition for the post January 10, 1968 period: recurring as the rate of compensation would be. We hold it accordingly.

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For the view above taken, we partially allow these appeals and remit these cases back to the High Court of

Karnataka for disposal on merits in accordance with law. We,
however, make no order as to costs in the appeals before us.
N.V.K. Appeals allowed
partly.
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JUDIS